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U.S. Coast Guard Proposes New Regulations Regarding Nontank Vessel Response Plans, SOPEPs, and Notice of Arrival Requirements

New Development

The United States Coast Guard issued a notice of proposed rulemaking (“NPRM”) on August 31, 2009 on long-awaited new regulations concerning the following: (i) requiring owners and operators of nontank vessels to prepare and submit oil spill nontank vessel response plans (“NTVRPs”); (ii) updating the international Shipboard Oil Pollution Emergency Plan (“SOPEP”) requirements; and (iii) requiring owners and operators to submit their vessel response plan control numbers with their notice of arrival information. Comments are due on or before November 30, 2009. *Link to NPRM:* <http://edocket.access.gpo.gov/2009/pdf/E9-20310.pdf>.

Background

As explained in a previous Blank Rome advisory available at <http://www.blankrome.com/index.cfm?contentID=37&itemID=82>, the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293) contained a provision requiring owners and operators of all nontank vessels of 400 gross tons or greater—as measured under the International Tonnage Convention (“ITC”)—to prepare and submit NTVRPs to the Coast Guard by August 8, 2005. On February 4, 2005, the Coast Guard issued Navigation and Vessel Inspection Circular Number 01-05, which was amended by Navigation and Vessel Inspection Circular Number 01-

05, CH-1 (“NVIC 01-05, CH-1”), dated January 13, 2006, in order to provide interim guidance for the development and review of NTVRPs.

Regulations were not issued over the next several years, however, and the Coast Guard issued a notice on June 23, 2008 to inform U.S. and foreign-flag nontank vessel owners and operators that, effective August 22, 2008, it would begin enforcing the requirement to prepare and submit an NTVRP for certain nontank vessels based on the requirements contained in the law. The details of this notice were described in a Blank Rome advisory available at <http://www.blankrome.com/index.cfm?contentID=37&itemID=1583>. In the absence of such regulations, the Coast Guard has been enforcing NTVRP compliance for such vessels pursuant to the Ports and Waterways Safety Act.

Discussion

New NTVRP Regulations

The NPRM would formally require response plans from owners or operators of nontank vessels and the new regulations would appear in 33 C.F.R. Part 155, subpart J. Nontank vessels are defined as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States, carry oil of any kind as fuel for main propulsion, and are not tank

vessels. The proposed regulations will largely mirror the vessel response plan regulations for tank vessels, although there will be fewer requirements for nontank vessels with small fuel and cargo capacities (with varying requirements for capacities less than 2,500 barrels and less than 250 barrels). Additionally, there are a limited number of proposed exemptions, including for public vessels, foreign-flag vessels engaged in innocent passage, certain foreign-flag vessels engaged in transit passage, vessels carrying oil as a primary cargo, vessels that are not constructed to carry oil as fuel or cargo, permanently moored craft, and inactive vessels.

SOPEP Requirements

The Coast Guard NPRM would update its existing SOPEP regulations to align with the current SOPEP regulations issued by the International Maritime Organization (“IMO”). The IMO SOPEP regulations have changed since the promulgation of the original Coast Guard SOPEP regulations, including changes to required SOPEP text; categories for addressing steps to control discharges; crew personnel assignment requirements; and required notifications in the event of an oil spill. Also, the IMO added a new section to MARPOL Annex I requiring that oil tankers of 5,000 gross tons or more have prompt access to computerized, shore-based damage stability and residual structural strength calculation programs.

Reporting NTVRP Control Number in Notice of Arrival

The NPRM would also add a new requirement to the information submitted in a vessel’s Notice of Arrival. The Coast Guard will now require vessel owners or operators to submit their vessel response plan control number when submitting their Notice of Arrival prior to entry into U.S. ports in accordance with the Notice of Arrival procedures and timeframes.

Conclusions and Recommendations

The NPRM, in regard to the nontank vessel response plan requirements, has been long awaited by the maritime industry. Comments should consider, among other things:

- whether the NPRM expands on the current requirements and how burdensome it will be to come into compliance with the NTVRP requirements (again); and
- whether guidance in the NVIC will need to change as a result of the rulemaking process or whether such guidance should be codified during the rule-making process.

Careful review of the NPRM is critical for vessel owners and operators (whether U.S. flag or foreign-flag) that intend to operate vessels calling on U.S. ports in order to make sure they are prepared to comply with the final rule once issued. Comments must be submitted by November 30, 2009. ■

For Additional Information

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